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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TROPICANA ENTERTAINMENT INC.,

Plaintiff,

v.

N3A MANUFACTURING, INC., d/b/a
HOTELURE, INC.; NIALI ALI; and JAY
KALMAN,

Defendants.

Case No. 3:16-cv-0257-LRH-VPC

ORDER

Before the court is plaintiff Tropicana Entertainment Inc.'s ("Tropicana") motion for default judgment. ECF No. 64.

I. Facts and Procedural Background

At its core, this is a breach of contract action. Plaintiff Tropicana owns and operates a number of hotels, resorts, and casinos throughout the world. As part of its business operations, Tropicana operates an online supplier portal known as SWS Direct. The supplier portal allows the Tropicana to procure goods and services directly from registered vendors. Prior to transacting business on SWS Direct, each vendor must submit a verified registration packet. As part of the registration packet, each vendor agrees to certain contractual terms and conditions. All purchases and sales through SWS Direct are conducted via purchase orders.

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1 Defendant N3A Manufacturing, Inc., d/b/a Hotelure, Inc. (“Hotelure”) is a company
2 which supplies various hotel goods and furnishings. Defendant Niall Alli is the owner of
3 Hotelure. On or about April 3, 2014, Hotelure, through defendant Jay Kalman, submitted a
4 verified vendor registration packet and became a registered vendor on SWS Direct. ECF No. 3,
5 Ex. 1. Thereafter, on six different occasions from April through September 2015, Tropicana
6 submitted purchase orders to Hotelure through SWS Direct for the purchase of hotel furniture
7 and equipment. *See* ECF No. 3, Exs. 3-6. On each occasion, Hotelure issued a confirming
8 invoice accepting each purchase order and requested either full or partial payment of the order
9 prior to delivery. In satisfaction of each purchase order, the Tropicana submitted payments in
10 excess of \$1,700,000.00 directly to Hotelure which were accepted and deposited. However,
11 Hotelure failed to deliver the contracted goods.

12 On May 17, 2016, Tropicana filed a complaint against defendants. ECF No. 1. Then, on
13 June 23, 2016, the Tropicana filed an amended complaint. ECF No. 26. Finally, on May 5, 2017,
14 Tropicana filed a verified second amended complaint with leave of court alleging seven causes
15 of action against defendants: (1) breach of contract; (2) violation of the Nevada Uniform
16 Commercial Code (“Nevada UCC”); (3) breach of the implied covenants of good faith and fair
17 dealing; (4) unjust enrichment; (5) conversion; (6) fraud and misrepresentation; and (7) negligent
18 misrepresentation. ECF No. 40. Despite being served with the second amended complaint on
19 August 2, 2017, defendants did not file an answer or otherwise respond to the complaint.

20 On December 7, 2017, Tropicana filed an application for entry of clerk’s default against
21 defendants (ECF No. 59) which was entered by the court clerk on December 11, 2017
22 (ECF No. 61). Thereafter, on March 9, 2018, Tropicana filed the present motion for default
23 judgment. ECF No. 64.

24 **II. Discussion**

25 Obtaining a default judgment is a two-step process governed by Rule 55 of the Federal
26 Rules of Civil Procedure. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). First, the
27 moving party must seek an entry of default from the clerk of court. FED. R. CIV. P. 55(a). Then,
28 after the clerk of court enters default, a party must separately seek entry of default judgment

1 from the court in accordance with Rule 55(b). FED. R. CIV. P. 55(b). Upon entry of a clerk's
2 default, the court takes the factual allegations in the complaint as true. Nonetheless, while entry
3 of default by the clerk is a prerequisite to an entry of default judgment, "a plaintiff who obtains
4 an entry of default is not entitled to default judgment as a matter of right." *Warner Bros. Entm't*
5 *Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (C.D. Cal. 2004) (citation omitted). Instead, whether
6 to grant a default judgment is in the court's discretion. *Id.*

7 The Ninth Circuit has identified several relevant factors in determining whether to grant
8 default judgment including: (1) the possibility of prejudice to the plaintiff; (2) the merits of the
9 plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake
10 in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default
11 was due to the excusable neglect; and (7) the strong policy favoring decisions on the merits.
12 *Eitel*, 782 F.2d at 1471-72.

13 The court has reviewed the documents and pleadings on file in this matter and finds that
14 the *Eitel* factors support entering a default judgment in favor of Tropicana in this action. First,
15 Tropicana will be severely prejudiced if a default judgment is not entered because defendants
16 have shown an unwillingness to appear or otherwise defend themselves in this action since the
17 filing of the second amended complaint. Second, Tropicana's claims are sufficiently pled and
18 supported in its verified complaint and the attached purchase orders and copies of cashed checks
19 support its request for monetary relief. Third, the monetary relief requested by Tropicana is
20 directly related to its claims for breach of contract and the unfulfilled purchase orders. Fourth,
21 defendants have failed to provide any excusable neglect for their failure to participate in this
22 action. Finally, although public policy favors a resolution on the merits, the court finds that a
23 default judgment is warranted in light of the other *Eitel* considerations. Therefore, the court shall
24 grant Tropicana's motion for default judgment.

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1 IT IS THEREFORE ORDERED that plaintiff's motion for default judgment
2 (ECF No. 64) is GRANTED.

3 IT IS FURTHER ORDERED that plaintiff Tropicana Entertainment Inc. shall have ten
4 (10) days after entry of this order to prepare an appropriate judgment against defendants and
5 submit the same for approval and signature.

6 IT IS SO ORDERED.

7 DATED this 3rd day of May, 2018.

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9 LARRY R. HICKS
10 UNITED STATES DISTRICT JUDGE
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